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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 12252550/DH	FOR FURTHER ACTION	See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).
International Application No. PCT/AU2003/000778	International Filing Date (day/month/year) 20 June 2003	Priority Date (day/month/year) 20 June 2002
International Patent Classification (IPC) or national classification and IPC Int. Cl. 7 G01N 1/31, 35/00, G02B 21/34		
Applicant VISION BIOSYSTEMS LIMITED et al		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 4 sheets, including this cover sheet.

This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheet(s).

3. This report contains indications relating to the following items:

- I Basis of the report
- II Priority
- III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV Lack of unity of invention
- V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI Certain documents cited
- VII Certain defects in the international application
- VIII Certain observations on the international application

Date of submission of the demand 29 October 2003	Date of completion of the report 22 April 2004
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer RAJEEV DESHMUKH Telephone No. (02) 6283 2145

I. Basis of the report**1. With regard to the elements of the international application:***

the international application as originally filed.

the description, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of

the claims, pages , as originally filed,
pages , as amended (together with any statement) under Article 19,
pages , filed with the demand,
pages , received on with the letter of

the drawings, pages , as originally filed,
pages , filed with the demand,
pages , received on with the letter of

the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).

the language of publication of the international application (under Rule 48.3(b)).

the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

contained in the international application in written form.

filed together with the international application in computer readable form.

furnished subsequently to this Authority in written form.

furnished subsequently to this Authority in computer readable form.

The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.

The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished

4. The amendments have resulted in the cancellation of:

the description, pages

the claims, Nos.

the drawings, sheets/fig.

5. This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 1–26	YES
	Claims	NO
Inventive step (IS)	Claims 1–26	YES
	Claims	NO
Industrial applicability (IA)	Claims 1–26	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)

GB 2127577 A (V-TECH INC.) 11 April 1984—Abstract; figure 1. V-TECH discloses a transparent laboratory slide for wet-mount microscopic examination. The fluid specimen is retained in the thin spaces between the platform surfaces and the cover slips by capillary action.

US 4790640 A (NASON) 13 December 1988—Abstract; figure 5. NASON discloses a laboratory slide comprising a transparent upper coverslip affixed to the lower slide plate by a thin bonding agent defining one or more examination chambers into which liquid specimens may be drawn by capillary action for viewing or analysis.

Patent Abstracts of Japan, JP 63-019532 A (SEKISUI CHEM CO LTD) 27 January 1988—Abstract; drawing. SEKISUI CHEM discloses a plate for observation where a cover glass and a slide glass are adhered such prescribed gap apart from each other that the capillary phenomenon can occur.

US 6118582 A (DEL BUONO) 12 September 2000—Abstract; figure 3. DEL BUONO discloses a slide holder for receiving one or more microscope slides. The slide has retaining areas 12.

None of the cited documents discloses or (individually or in an obvious combination) suggests the invention as claimed wherein a slide cover-body forms a cavity between the cover-body and the slide, and wherein the cover-body has a projection extending from the body to define a fluid reservoir in fluid communication with the cavity. Therefore the claimed invention appears to be novel, to involve an inventive step, and to be industrially applicable. (Please see the Observations under Box VIII for the issues raised in the first written opinion and the applicant's submissions in response to these issues.)

VIII. Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. According to the first written opinion, the claims do not refer to the field of invention which is a *cover for use with a microscope slide*. The "substrate" should be defined unambiguously as a microscope slide.

The applicant submits that such a strict definition of the substrate would, however, be unnecessarily limiting given the defined reservoir provided by the cover of this invention could, for example, be formed over a slide or like substrate which is not an actual "microscope" slide.

2. According to the first written opinion, the claims attempt to define the invention ("the cover") by reference to features of the substrate ("positioning over the substrate", "when the cover is fitted to the substrate"). It appears that the invention needs to be defined as a combination of the cover and the slide, wherein the cover has certain technical features.

The applicant submits that there is, in fact, support in the specification to justify a claim to the cover, per se. In relation to the slide and cover combination, the applicant expects the authorised officer has overlooked claim 23, which defines such a combination.

3. According to the first written opinion, the claims use vague terms such as *a projection*, or *a protrusion extending from the projection* whereas the description is quite specific about *the projecting legs 21 either side of the body 12 forming a fluid receiving zone*, or *a protrusion in the form of a nib 15 such that the fluid may be deposited directly on the nib 15 so that the fluid rolls over the projection 13 into reservoir 14*.

The applicant submits that the authorised officer has suggested that the broader terminology used in the claims be replaced with the more structurally specific features. The applicant believes that there is no actual requirement for such amendments given the features are presently clearly defined and limited in an appropriate fashion by functional terminology.

4. According to the first written opinion, it is clear from figure 13(b) for example, that the reservoir is formed by the inclined slide at its bottom, part of the cover sidewall on one side, and the two projecting legs on two sides. There is no restraint for the fluid on the fourth side, and none is required when the slide is tilted as shown in figure 13(b). None of these features are evident in claim 1. In other words, the fluid reservoir is not formed by *a projection* alone, but requires other technical features as enumerated here.

The applicant submits that the authorised officer has discussed various structural components that serve to define the fluid reservoir and has suggested all of those features need to be included in the claim for a proper definition of the invention. The applicant does not, however, consider all of the various features necessary for the broadest definition of the invention and notes such features are in fact the subject of, for example, claim 18.

5. According to the first written opinion, claim 1 is completely silent about the spreading of the fluid across the full width of the cavity 18, which appears to be an essential feature of the invention.

The applicant submits that the authorised officer has suggested a feature that needs to be included in the claims is the spreading of fluid across the full width of the cavity. Although such a feature is certainly preferable, the applicant does not believe it necessary for a proper definition of the invention, which relates to the projection defining a reservoir, in combination with the cavity.

6. According to the first written opinion, in view of the above observations, the construction of claim 1 (at least) is such that it appears to be *prima facie* invalid, and unsupported by the detailed description of the invention. However in light of the applicant's submissions, the claims appear to comply with the requirements of the PCT.